



BUREAU OF THE ASSEMBLY OF STATES PARTIES

Fourth meeting

The Hague

7 May 2019

Agenda and decisions

The meeting was chaired by the President of the Assembly, H.E. O-Gon Kwon (Republic of Korea).

1. Confidential issue of concern to the Assembly and the Court

The Registrar briefed the working group on a confidential issue of concern to the Assembly and the Court.

2. Update on the Committee for the Election of the Prosecutor

The President recalled that the Bureau had adopted the Terms of Reference for the Election of the Prosecutor¹ by a silence procedure which had ended on 3 April 2019.² To facilitate the process of designating the members of the Committee for the Election of the Prosecutor and appointing a panel of experts, two notes verbales had been circulated to all States Parties on 12 April, with a deadline of 31 May, inviting regional group consultations on the Committee members and nominations for the panel of experts. A request for nominations for the panel of experts had also been sent to civil society. As of 7 May, the President had received one nomination for a member of the Committee and two nominations for the panel of experts. The President expected that the decisions regarding designation of the members and appointment of the experts would be taken up at the Bureau meeting in New York tentatively scheduled for 7 June.

The President noted that the Bureau needed to take a decision on whether the costs incurred by the members and/or experts should be covered, and if so, on what terms. The President expected that this topic would also be considered by the Bureau at its 7 June meeting. Some Bureau members noted their expectation that the costs of the Committee should be as low as possible; the point was made that if travel costs were to be covered for either the members or the experts, economy class travel should be applied as even Ministerial-level representatives of some Bureau members flew in that class. However, one Bureau member noted that a higher class of travel should be considered in certain circumstances.

¹ Subsequently issued as document ICC-ASP/18/INF.2.

² https://asp.icc-cpi.int/EN_menus/asp/elections/prosecutor/Pages/Prosecutor2020.aspx.

3. Eighteenth session of the Assembly of States Parties:

a) Revised provisional agenda

The Bureau approved the revised provisional agenda for the eighteenth session of the Assembly, which included a new agenda item “Election to fill a vacancy on the Committee on Budget and Finance”. The election had become necessary following the 18 March 2019 resignation of one member of the Committee on Budget and Finance, Ms. Ingrid Eiken Holmgren (Sweden).

b) Election to fill a vacancy on the Committee on Budget and Finance: nomination period

Pursuant to resolution ICC-ASP/1/Res.5,³ the Bureau, fixed the nomination period for the presentation of candidates for the election to fill the vacancy on the Committee on Budget and Finance to run for 12 weeks, from 3 June to 25 August 2019 (Central European Time).⁴ The candidate elected will complete the term of office of Ms. Holmgren, i.e. until 20 April 2021. The Bureau noted that, since the vacancy was in the Western Europe and other States group, nominations to fill the vacancy would be restricted to that regional group.

4. Independent Oversight Mechanism (IOM)

a) IOM activity report

The Head of the Independent Oversight Mechanism (IOM) introduced the “IOM Activity Report to the Bureau of the Assembly of States Parties: October 2018 to March 2019”, dated 30 April 2019, which was submitted pursuant to resolution ICC-ASP/12/Res.6. The Bureau also had before it the document entitled “Independent Oversight Mechanism: Terms of Reference for the Evaluation of the Administration of the Trust Fund for Victims”, dated 15 February 2019.

The IOM Head noted that the IOM was experiencing challenges in fully implementing its mandate, in particular with the workload in the investigation function. With the support of the President, the IOM was able to receive additional resources to assist in this respect. The need for additional resources necessary for the IOM would be reflected in the proposed programme budget for 2020 for the Assembly’s consideration. Discussions with the Bureau’s facilitator for the topic “Review of the operational mandate of the IOM”, Ambassador Eduardo Rodríguez (Bolivia), would also continue regarding the IOM’s mandate.

The IOM is conducting an assessment of the administration of the Secretariat of the Trust Fund for Victims requested by the Assembly in its seventeenth session.⁵ In accordance with normal evaluation practice, a scoping exercise was conducted which included consultation with the Assembly Vice-President Jens-Otto Horslund and the previous facilitator for the budget, the Chair of the Board of Directors of the Trust Fund for Victims, the Registrar, and the Executive Director of the Secretariat of the Trust Fund for Victims. Terms of Reference were then prepared for the evaluation, and the IOM hoped that the assessment would help improve the functioning of the Trust Fund.

In response to queries on a possible role for the Bureau in light of the seeming overlap of oversight bodies in the Court’s regulatory framework, the IOM Head noted that two issues were related to the IOM mandate. As regards the overlap of oversight bodies, there were some limitations, i.e. the IOM was contemplated in the Rome Statute, and the

³ Procedure for the nomination and election of members of the Committee on Budget and Finance.

⁴ The nomination period for the vacancy corresponds to the nomination period which the Bureau fixed at its 26 February 2019 meeting for the regular election of six members of the Committee at the eighteenth session of the Assembly.

⁵ Resolution ICC-ASP/17/Res.4, Section L, para. 7.

Committee on Budget and Finance and the Audit Committee by Assembly resolutions. It was the Bureau's task to discuss optimizing the practical functioning of the Assembly's oversight bodies. As regards the harmonization of the regulatory framework within the Court, this process had now been initiated, but it was important that the new regulatory framework of the Court also be consistent with any revised IOM mandate.⁶

Bureau members noted that the IOM Head had recruited a legal consultant to examine an issue with respect to the establishment of the IOM. The IOM and the Presidency of the Court were both seized of the issue and each was reviewing it. The IOM Head had, however, decided to commission an independent legal opinion. The findings of the legal consultant had been shared with the Assembly President, who indicated that he had no objection to sharing the legal opinion with Bureau members after consulting with the Head of the IOM.

In responding to queries on the details of internal cases in the IOM's reports, the IOM Head indicated that IOM reports would provide details regarding investigation cases, but without jeopardizing the rights of Court staff members, and would also include statistics regarding types of cases such as sexual harassment, which Bureau members want to ensure are addressed. The Head of the IOM assured the Bureau that such matters were taken seriously, and that the limitations experienced by the IOM in dealing with these matters as quickly as it would like were not a matter of priority but of capacity only.

The Bureau took note of the limited resources of the IOM to conduct the activities within its mandate.

As regards the evaluation of the administration of the Secretariat of the Trust Fund for Victims, it was noted that the Terms of reference of the evaluation appeared to focus more on reparations than on the administration of the Secretariat of the Trust Fund for Victims, and it was noted that there had been general concerns, e.g. the low implementation rate and low staffing of the Secretariat, which had led to the Assembly's request.

In that regard, the IOM Head clarified that there had been no prior discussion with the IOM before the evaluation was requested, which would have allowed for a better exchange regarding what an evaluation could do. The Head of the IOM noted that consultations with various stakeholders had revealed that the challenges of the Trust Fund were not only administrative, but were broader, and that reparations was the point at which all issues converged, hence the focus on reparations. This did not mean, however, that the evaluation would not cover other issues raised, but would place them in its broader context.

The focal point for the review of the operational mandate of the IOM, Ambassador Eduardo Rodríguez indicated that he was discussing with the IOM the way ahead for the facilitation. He noted that there were five oversight mechanisms of the Court, and the IOM needed a more optimized way of carrying out its mandate. He had consulted with the focal point for Budget management oversight, Ambassador Annika Markovic (Sweden), on the need to find a balance among the respective oversight mechanisms, and he encouraged States Parties to examine how the other oversight mechanisms functioned. Further, there was a need to look at the Code of ethics for judges when considering the integrity and reputation of the Court.

5. Performance evaluation and objectives

Director of the Secretariat

The President recalled that the Bureau had, at its 26 February meeting, held some discussions on this issue. He had indicated (a) his intention to invite written feedback

⁶ See resolution ICC-ASP/17/Res.2, "Resolution on amendments to rule 26 of the Rules of Procedure and Evidence".

regarding the Director's performance; and (b) that he would submit more detailed objectives in due course as part of the consultation with Bureau members, with the goal of receiving Bureau member's comments thereon.

Evaluation of the 2017 - 2019 cycle

The President had received feedback from Bureau members, as well as facilitators, focal points and others, for which the President expressed his gratitude. The President informed the Bureau that most States Parties had expressed their satisfaction with the performance of the Director, while some State Parties identified areas that required improvement.

Performance objectives for the future period 2019 – 2020

The President had prepared draft performance objectives in consultation with the Director which he would send to the Bureau for discussion at the 14 June Bureau meeting.

6. Request by a State Party for the convening of a special session of the Assembly

The President referred to the 9 April 2019 letter from the Foreign Minister of the State of Palestine, in which the Minister had requested⁷ the convening of a special session of the Assembly of States Parties.

The Ambassador of the State of Palestine, Ambassador Rawan Sulaiman, was invited to address the Bureau. She recalled the statements made by States Parties after 5 April 2019 in support of the Court, noted that the special session was not directed at a particular State but would provide the opportunity for States Parties to address matters of principle, and recalled that it was the responsibility of the Bureau to ensure that the Court was able to carry out its mandate without being undermined.

The State of Palestine envisaged that all States Parties would be actively involved in the special session as the issues to be discussed related to the critical functioning of the Court and were therefore of concern all States Parties. Ambassador Sulaiman noted that it was the first time that a request had been made for the convening of a special session, and the circumstances described warranted a special session as foreseen in the Rome Statute. As a preliminary proposal, she believed that the duration of one day would be sufficient. Further, the special session could be held in mid-June or early July, and any logistical difficulties could be resolved where States Parties had the will.

The President stated that he and Vice-President Horslund (Denmark) had held discussions with Ambassador Sulaiman as to the best way forward and proposed that the topic be taken up as one of the components of the Bureau retreat in June.

Ambassador Sulaiman welcomed the consideration made of her State's proposal for a special session and noted that, in the absence of an agreement to convene a special session, the decision on the way forward was for the Bureau. She had no objection to the proposal that it be discussed at the retreat or at the eighteenth session.

The President invited Bureau members to continue discussing the issue.

7. Status of contributions

The President informed the Bureau that, as at 30 April 2019, the Court had received €92 million (or 62 per cent) of the total budget of €148 million approved for 2019. The total

⁷ Pursuant to article 112 (6) of the Rome Statute and rule 8 of the Rules of Procedure of the Assembly of States Parties.

amount of outstanding contributions for 2019 and for prior years stood at €76 million. Thirty-two States Parties had outstanding contributions of more than one year, and 13 of those were ineligible to vote under article 112, paragraph 8 of the Rome Statute.

The President called upon all States Parties with outstanding contributions to make every effort to pay their contributions as soon as possible. He noted that the forthcoming report of the Committee on Budget and Finance on the work of its thirty-second session, would address the matter of outstanding contributions, and the possibility of payment plans for States Parties in arrears.

8. Other matters

a) Staff Pension Committee

The Bureau appointed Ambassador Kaili Terras (Estonia) as a member of the Staff Pension Committee of the International Criminal Court for a two-year period, pursuant to resolution ICC-ASP/3/Res.3.⁸

The President reminded States Parties interested in being appointed to the two remaining posts of alternate member of the Committee to inform Vice President Horslund.

b) Bureau report on the current Assembly schedule

Bureau members agreed that the Assembly's mandate on the issue of benefits and challenges with regard to the current schedule of Assembly sessions contained in resolution ICC-ASP/17/Res.5⁹ could be discussed at the Bureau retreat, where it would receive the required attention, as well as at the Bureau meeting following the retreat. It was also recalled that the mandate of the Assembly required the Bureau to submit a report to the Assembly and it was suggested that the Secretariat and another relevant office of the Registry provide additional information to facilitate a more detailed discussion.

The President would request the two Vice-Presidents, Ambassador Jens-Otto Horslund and Ambassador Michal Mlynár (Slovakia), to conduct consultations on this issue and to report to him before September.

c) Bureau retreat

Following the broad support expressed at its 26 February 2019 meeting for the Bureau to hold a retreat in order to discuss important issues concerning the Court, and after consultations with States Parties, the President informed the Bureau that the retreat would be held on Thursday, 13 June 2019. He thanked the host State for its offer of the venue.

Vice-President Horslund proposed, after consultations with Bureau members, that the retreat should focus on reforms and the challenges faced by the Court, including the consideration of the subject matter contained in the request for the special session which the Bureau had discussed. In his view, a retreat was the appropriate forum for discussion of the issues identified by States. He was preparing a concept paper on the issues suggested for discussion, and noted that, while various views of the States Parties would be taken into account, the concept paper would not be negotiated. Once finalized as a Presidency's paper, it would provide the framework for discussion.

⁸ The Hague Working Group had, on 3 April 2019, recommended the appointment of Ambassador Kaili Terras (Estonia) as a member of the Staff Pension Committee.

⁹ Para. 103 provides as follows: "*Requests* the Bureau, in consultation with all States Parties, the Court and civil society, both in New York and The Hague, to submit a report assessing the benefits and challenges with regard to current schedule, including the proposal to hold the future Assembly meetings in the first semester of each calendar year, length, including the proposal to shorten the Assembly, location of the meetings of the Assembly and of the Bureau and to make recommendations to improve efficiency;"

Ambassador Horslund stressed the importance of transparency and of involving delegates based in New York, where all States Parties were represented, in order to ensure that they had the opportunity to voice their opinions. He also noted that it was important to involve Court officials since they were also considering some of the issues identified for discussion.

d) Next Bureau meeting

The next Bureau meeting in The Hague would be held on Friday, 14 June 2019.

e) Availability of written judgments

A query was raised regarding the lack of availability of written judgments in some cases and a concern was expressed that this could affect the possibility of appeal. The representative of the Presidency indicated that while the Rome Statute provides for the delivery of written judgments, it does not state a timeline. He noted that any related appeals proceedings would be tied to the written judgment, with due regard for any question of fairness of trials and the rights of the accused.

* * *